

Universal Service Administrative Company
Schools & Libraries Division

EXHIBIT TWO

COMMITMENT ADJUSTMENT LETTER

January 31, 2003

Patricia D. Saad
LT JOSEPH P KENNEDY JR INST
801 Buchanan St. N.E.
Washington, DC 20017 3924

Re: COMMITMENT ADJUSTMENT
Funding Year 2000-2001
Form 471 Application Number 192091

Dear Applicant

Our routine reviews of Schools and Libraries Program funding commitments revealed certain applications where funds were committed in violation of program rules.

In order to be sure that no funds are used in violation of program rules, SLD must now adjust your overall funding commitments. The purpose of this letter is to make the adjustments to your funding commitments required by program rules.

FUNDING COMMITMENT REPORT

On the pages following this letter, we have provided a Funding Commitment Report for the Form 471 application cited above. The enclosed report includes a list of the FRNs from your application for which adjustments are necessary. The SLD is also sending this information to your service provider(s), so preparations can be made to implement this decision. Immediately preceding the Funding Commitment Report, you will find a guide that defines each line of the Report.

Please note that if the Funds Disbursed to Date amount exceeds your Adjusted Funding Commitment amount, USAC will have to recover some or all of the funds disbursed. The amount is shown as Funds to be Recovered. If funds must be recovered, we will be sending your service provider a letter describing the process for recovering these funds in the near future, and we will send a copy of the letter to you. If the Funds Disbursed to Date amount is less than the Adjusted Funding Commitment amount, USAC will continue to process properly filed invoices up to the Adjusted Funding Commitment amount.

TO APPEAL THESE FUNDING COMMITMENT DECISIONS

If you wish to appeal the Funding Commitment Decision(s) indicated in this letter, your appeal must be made in writing and **RECEIVED BY THE SCHOOLS AND LIBRARIES DIVISION (SLD) WITHIN 60 DAYS OF THE DATE AT THE TOP OF THIS LETTER**. Failure to meet this requirement will result in automatic dismissal of your appeal. In your letter of appeal

1. Include the name, address, telephone number, fax number, and e-mail address (if available) for the person who can most readily discuss this appeal with us
2. State outright that your letter is an appeal. Identify which Commitment Adjustment Letter you are appealing. Your letter of appeal must include the applicant name and the Form 471 Application Number from the top of this Commitment Adjustment Letter
3. Identify the particular Funding Request Number(s) (FRN) that is the subject of your appeal. When explaining your appeal, include the precise language or text from the Commitment Adjustment Letter that is at the heart of your appeal. By pointing us to the exact words that give rise to your appeal, you will enable us to more readily understand and respond appropriately to your appeal. Please keep your letter to the point, and provide documentation to support your appeal. Be sure to keep copies of your correspondence and documentation
4. Provide an authorized signature on your letter of appeal

If you are submitting your appeal on paper, please send your appeal to: Letter of Appeal, Schools and Libraries Division, Box 125- Correspondence Unit, 80 South Jefferson Road, Whippany, NJ 07981. Additional options for filing an appeal can be found in the "Appeals Procedure" posted in the Reference Area of the SLD web site www.sl.universalservice.org or by calling the Client Service Bureau at 1-(888)-203-8100. We encourage the use of either the e-mail or fax filing options to expedite filing your appeal.

While we encourage you to resolve your appeal with the SLD first, you have the option of filing an appeal directly with the Federal Communications Commission (FCC). You should refer to CC Docket Nos. 96-45 and 97-21 on the first page of your appeal to the FCC. Your appeal must be **RECEIVED BY THE FCC WITHIN 60 DAYS OF THE ABOVE DATE ON THIS LETTER**. Failure to meet this requirement will result in automatic dismissal of your appeal. Further information and options for filing an appeal directly with the FCC can be found in the "Appeals Procedure" posted in the Reference Area of the SLD web site, www.sl.universalservice.org or by calling the Client Service Bureau at 1-(888)-203-8100. We strongly recommend that you use either the e-mail or fax filing options because of continued substantial delays in mail delivery to the FCC. If you are submitting your appeal via United States Postal Service, send to: FCC, Office of the Secretary, 445 12th Street SW, Washington, DC 20554.

A GUIDE TO THE FUNDING COMMITMENT REPORT

Attached to this letter will be a report for each funding request from your application for which a commitment adjustment is required. We are providing the following definitions

- **FUNDING REQUEST NUMBER (FRN)** A Funding Request Number is assigned by the SLD to each request in Block 5 of your Form 471 once an application has been processed. This number is used to report to applicants and service providers the status of individual discount funding requests submitted on a Form 471.
- **SPIN (Service Provider Identification Number)** A unique number assigned by the Universal Service Administrative Company to service providers seeking payment from the Universal Service Fund for participating in the universal service support programs.
- **SERVICE PROVIDER** The legal name of the service provider.
- **CONTRACT NUMBER** The number of the contract between the eligible party and the service provider. This will be present only if a contract number was provided on Form 471.
- **SERVICES ORDERED** The type of service ordered from the service provider, as shown on Form 471.
- **SITE IDENTIFIER** The Entity Number listed in Form 471 for 'site specific' FRNs.
- **BILLING ACCOUNT NUMBER** The account number that your service provider has established with you for billing purposes. This will be present only if a Billing Account Number was provided on your Form 471.
- **ADJUSTED FUNDING COMMITMENT** This represents the adjusted total amount of funding that SLD has committed to this FRN. If this amount exceeds the Funds Disbursed to Date, the SLD will continue to process properly filed invoices up to the new commitment amount.
- **FUNDS DISBURSED TO DATE** This represents the total funds which have been paid up to now to the identified service provider for this FRN.
- **FUNDS TO BE RECOVERED** This represents the amount of Funds Disbursed to Date that exceed the Adjusted Funding Commitment amount. These funds will have to be recovered. If the Funds Disbursed to Date do not exceed the Adjusted Funding Commitment amount, this entry will be \$0.
- **FUNDING COMMITMENT ADJUSTMENT EXPLANATION** This entry provides a description of the reason the adjustment was made.

09/07/03 12:12pm P. 002

Funding Commitment Report for Application Number: 192091

Funding Request Number 410090 SPIN 143002681
Service Provider Verizon- Washington, D C Inc
Contract Number T
Services Ordered TELCOMM SERVICES
Site Identifier 21683 LT JOSEPH P KENNEDY JR INST
Billing Account Number 202529050054463
Adjusted Funding Commitment \$0.00
Funds Disbursed to Date \$12,654.64
Funds to be Recovered \$12,654.64
Funding Commitment Adjustment Explanation:

After thorough investigation, it was determined that this funding request must be rescinded in full. A Beneficiary Audit found that the entity (Rhode Island Avenue Facility) receiving this service is an adult education facility. Based on information provided by the District of Columbia it has been determined that adult education facilities in the District of Columbia are not eligible for support under the SLD Support Mechanism. Accordingly, the commitment amount is rescinded in full.

Funding Request Number 410311 SPIN 143001192
Service Provider AT&T Corp
Contract Number T
Services Ordered TELCOMM SERVICES
Site Identifier 21683 LT JOSEPH P KENNEDY JR INST
Billing Account Number 0206166791001
Adjusted Funding Commitment \$5,046.62
Funds Disbursed to Date \$4,515.18
Funds to be Recovered \$0.00
Funding Commitment Adjustment Explanation:

After thorough investigation, it was determined that this funding request must be rescinded in the amount of \$1,390.40. A Beneficiary Audit found that the entity (Rhode Island Avenue Facility), an adult education facility, is receiving a portion of the requested service. Based on information provided by the District of Columbia it has been determined that adult education facilities in the District of Columbia are not eligible for support under the SLD Support Mechanism. Based on sample phone bills, 21.6% of the funding request applies to the ineligible facility. Accordingly, the commitment amount is reduced by the corresponding amount of \$1,390.40.

Funding Request Number: 410670 SPIN 143006655
Service Provider: Vero fka Vero East/Maryland - D C
Contract Number: N/A
Services Ordered: INTERNET ACCESS
Site Identifier: 21683 LT JOSEPH P KENNEDY JR INST
Billing Account Number: 680 Rhode Island Ave
Adjusted Funding Commitment: \$0.00
Funds Disbursed to Date: \$6,233.40
Funds to be Recovered: \$6,233.40

Funding Commitment Adjustment Explanation

After thorough investigation, it was determined that this funding request must be rescinded in full. A Beneficiary Audit found that the entity (Rhode Island Avenue Facility) receiving this service is an adult education facility. Based on information provided by the District of Columbia, it has been determined that adult education facilities in the District of Columbia are not eligible for support under the SLD Support Mechanism. Accordingly, the commitment amount is rescinded in full.

Funding Request Number: 410738 SPIN 143009179
Service Provider: Xsystemz, Inc dba AAA Networks
Contract Number: N/A
Services Ordered: INTERNAL CONNECTIONS
Site Identifier: 21683 LT JOSEPH P KENNEDY JR INST
Billing Account Number: Maintenance
Adjusted Funding Commitment: \$15,063.19
Funds Disbursed to Date: \$24,295.46
Funds to be Recovered: \$9,232.27

Funding Commitment Adjustment Explanation

After thorough investigation, it was determined that this funding request must be rescinded in the amount of \$9,232.27. A Beneficiary Audit found that the entity (Rhode Island Avenue Facility), an adult education facility, is receiving a portion of the requested service. Based on information provided by the District of Columbia, it has been determined that adult education facilities in the District of Columbia are not eligible for support under the SLD Support Mechanism. Based on the number of users of the service at Rhode Island Avenue to the total number of users (70 of 183), 38 percent of the request represents ineligible charges. Accordingly, the commitment amount is reduced by the corresponding amount of \$9,232.27.

Funding Request Number 410783 SPIN 143009179
Service Provider Xsystmz, Inc. dba AAA Networks
Contract Number N/A
Services Ordered INTERNAL CONNECTIONS
Site Identifier 21683 LT JOSEPH P KENNEDY JR INST
Billing Account Number 680 Rhode Island Ave
Adjusted Funding Commitment \$0 00
Funds Disbursed to Date \$23,931 04
Funds to be Recovered \$23,931 04

Funding Commitment Adjustment Explanation

After thorough investigation, it was determined that this funding request must be rescinded in full. A Beneficiary Audit found that the entity (Rhode Island Avenue Facility) receiving this service is an adult education facility. Based on information provided by the District of Columbia it has been determined that adult education facilities in the District of Columbia are not eligible for support under the SLD Support Mechanism. Accordingly, the commitment amount is rescinded in full.

LT. JOSEPH P.
Kennedy Institute

INNOVATION AND LEADERSHIP IN DEVELOPMENTAL DISABILITIES

EXHIBIT THREE

February 25, 2003

Letter of Appeal

Schools and Libraries Division
Box 125 – Correspondence Unit
80 South Jefferson Road
Whippany, NJ 07981

Reference: Commitment Adjustment Letter dated January 31, 2003
Applicant Name: Lt Joseph P Kennedy Jr Inst
Form 471 Application Number: 192091
Funding Year: 2000-2001

Contact Information: Patricia D McCaffrey
801 Buchanan St NE
Washington, DC 20017
Telephone: (202) 281-2756
Facsimile: (202) 529-3982
Email: pmccaffrey@kennedyinstitute.org

Dear Sir or Madam

This letter is to appeal the SLD decisions regarding the following FRNs on the referenced Commitment Adjustment Letter:

- FRN 410090
- FRN 410311
- FRN 410670
- FRN 410738
- FRN 410783

In the Funding Commitment Adjustment Explanation for each of the above funding requests, the following reason is given for reducing the commitment amount (or a portion thereof): "*A Beneficiary Audit found that the entity (Rhode Island Avenue Facility) receiving this service is an adult education facility* ". The Kennedy Institute believes this statement is the result of a misunderstanding about the nature of our programs at the Rhode Island Avenue facility. Specifically, the labeling of the Rhode Island Avenue facility as an adult education facility is a misnomer and does not accurately describe the facility and/or its programs and students.

Please see the attached letter to Mr. Jim Rodda, Manager, Internal Audit, Universal Service Administrative Company, dated June 27, 2002, for Kennedy Institute's response to the Audit Report.

The **Individuals with Disabilities Education Act (IDEA)**, Part B, Assistance for Education of All Children with Disabilities, requires states that receive federal funding under the Act provide students, *ages 5 - 21 years*, with a free appropriate public education (FAPE) Under Part B, school districts are required to ensure that each student diagnosed with a disability (as defined by IDEA) receive FAPE.

In accordance with IDEA, the Kennedy Institute educates students with developmental disabilities, ages 6 to 21 years, in our un-graded academic program that also offers intensive therapeutic, vocational and transition services that foster independence. The Rhode Island Avenue facility provides Secondary Education and GED classes for individuals with developmental disabilities.

At Kennedy Institute, students work toward personal goals they set with their families and teachers and prepare to make the transition back into neighborhood schools or graduate and move into employment and/or post-secondary education. We group students in classrooms according to their goals and support requirements. The funding requests listed on the previous page are based solely on the Secondary Education and GED courses provided at the Rhode Island Avenue facility.

The U.S. Department of Education defines Adult Basic Education as programs designed for adults and out-of-school youth ages 16 years or older who are currently functioning below the eighth grade level or equivalent; are not enrolled in secondary school, do not have a secondary school diploma or its equivalent; and are beyond the age of compulsory school attendance under State law

The students at the Rhode Island Avenue facility are youth, some in their late teens, with developmental disabilities and are receiving secondary education; not post-secondary education. Most of the students at the Rhode Island Avenue facility are at GED level and lower. Many of the students are being taught to read and write, others are being provided GED preparation.

In closing, the Rhode Island Avenue facility offers secondary education for students at or under GED level. In accordance with SLD program eligibility requirements, this meets the statutory definition of a Secondary School as defined in the Elementary and Secondary Education Act of 1965 in that the school "does not include any education beyond grade 12."

Kennedy Institute appreciates the opportunity to appeal these commitment adjustment decisions and eagerly awaits a response. Please feel free to contact us if any further information is required.

Sincerely,

Michael D. Ward
President and CEO
Telephone: (202) 281-2774

Attachment

LT. JOSEPH P.
Kennedy Institute
INNOVATION AND LEADERSHIP IN DEVELOPMENTAL DISABILITIES

June 27, 2002

Mr. Jim Rodda
Manager, Internal Audit
Universal Service Administrative Company
2120 L Street, NW, Suite 600
Washington, DC 20037

Reference: USAC Internal Audit Report, Lt. Joseph P. Kennedy Institute, Funding Year 2000

Dear Mr Rodda:

I am in receipt of the Funding Year 2000 Internal Audit Report for the Lt. Joseph P. Kennedy Institute that was forwarded to me by your office on June 25, 2002. I have reviewed the report and have the following comments.

Audit Statement:

Under section F. Site Visits, the audit report states the following:

- 2 We observed the equipment used to ensure it is used for educational purposes in accordance with S&L program guidelines. In our visit to the Rhode Island Avenue facility, we observed a computer lab purposefully designed to assist students in learning computer skills and searching for job opportunities. Adult education students (over the age of 18) utilize this facility. Per PIA operating procedures, Washington, D C. adult education facilities/students are not eligible for E-rate funding.

Kennedy Institute Response:

The computer lab referred to in Section F, Para. #2, above, is used by students below GED level. The students using the lab are not in a post-secondary program (e.g., continuing education that a university might offer) and are not beyond grade 12. As such, we believe that the computer lab/students are eligible for E-rate funding in accordance with the Code of Federal Regulations, Title 47, Part 54, Subpart F - Universal Service Support for Schools and Libraries, §54.500 Terms and Definitions. The term "secondary school" is defined as one that does not offer education beyond grade 12.

Thank you for providing me the opportunity to respond to the Audit Report. Please contact me via email at pmccaffrey@kennedyinstitute.org if you require any additional information.

Sincerely,

Patricia D. McCaffrey
E-Rate Coordinator

KEITH R. MALLEY
ATTORNEY AT LAW
VA, MD, DC, GA BAR

EXHIBIT FOUR

By Federal Express

June 10, 2003

Mr. Wayne Scott
Director, Internal Audit
Universal Service Administrative Company
2120 L Street, NW, Suite 600
Washington, DC 20037

Mr. Jim Rodda
Manager, Internal Audit
Universal Service Administrative Company
2120 L Street, NW, Suite 600
Washington, DC 20037

Re Audit of Lt Joseph P Kennedy Institute, Funding Year 2000, by Internal Audit
Department, Universal Service Administrative Company ("Audit Report")

Dear Mr. Scott and Mr Rodda.

I have been retained by the Lt. Joseph P. Kennedy Institute in connection with the
above referenced Audit Report (copy attached).

We are requesting that you revise or supplement the report, in order to distinguish
between school facilities that provide adult basic education for learning and developmentally
disabled persons at the elementary and secondary course level, such as Kennedy's facility at
Rhode Island Avenue, and school facilities that provide adult education programs and post
secondary courses for persons who are not learning or developmentally disabled.

Specifically, page 3 of the Audit Report, Section F 2, Site Visits, states as follows:

"In our visit to the Rhode Island Avenue facility, we observed a computer lab
purposefully designed to assist students in learning computers kills and searching for
job opportunities Adult education students (over the age of 18) utilize this facility.
Per PIA operating procedures, Washington DC adult education facilities/students are
not eligible for E-rate funding."

The Kennedy Institute responded to a draft of this paragraph of the audit report, by
letter to Mr. Rodda dated June 27, 2002, stating that the computer lab is used by learning and
developmentally disabled students who are in a secondary school program that is below the
GED level, and that therefore the facility is eligible for E-rate funding.

However, the final Audit Report does not revise the draft paragraph, but simply adds Kennedy's response below it as a secondary, stand-alone, comment. This leaves the clear impression that the Audit Report does not agree with Kennedy's response, and that the Audit Report finding is that the Rhode Island facility is an adult education facility used by adult education students, not eligible for E rate funding under PIA operating procedures.

This finding and conclusion, if intended, could not be correct. As is clearly stated in the FCC Form 470 instructions, upon which Kennedy expressly relied when applying for E-rate funding for the Rhode Island Avenue school facility:

"For purposes of the universal service support mechanisms, schools must meet the statutory definition of elementary and secondary schools found in the Elementary and Secondary Education Act of 1965, as amended, 20 USC 8801(14) and (26). An elementary school is a non-profit institutional day or residential school, including a public elementary charter school, that provides elementary education, as determined under state law. 47 CFR 54.500(b) and 20 USC 8801(14). A secondary school is a non profit institutional day or residential school, including a public secondary charter school, that provides secondary education as determined under state law, except that such term does not include any education beyond grade 12. 47 CFR 54.500(j) and 20 USC 8801(26)."

Form 470 Instructions, section II A

The definition does not include any reference to the age of student. To the contrary, age is clearly not a criteria to qualify for E-rate funding. The applicable criteria is the type of education provided by the applicant school facility.

In this regard, in the applicable audit year, 2000, Kennedy's Rhode Island Avenue school facility contained the Kennedy Institute adult basic education program. This is a basic education program for adult students with learning and developmental disabilities, and works with these students on literacy training, GED preparation and other basic elementary and secondary education. See the Kennedy web site, at www.kennedyinstitute.org, and at Attachment One hereto (the Rhode Island facility now also includes the Kennedy Institute Upper School, which is for youth with learning and developmental disabilities age 13 to 22).

Kennedy's students and program are not at all comparable to traditional adult education students and programs. Kennedy's students are learning and developmentally disabled and many never exceed function at elementary level at best. Very few of the students ever obtain a GED; those who do are "graduated" from the program, which does not continue beyond the secondary school level. In fact, most of the Kennedy students have not satisfactorily completed regular elementary or middle school, and would not even qualify for admission or acceptance into any adult education program offered by DC Public Schools.

As an apparent consequence of the Audit Report, the Kennedy Institute has now received three Commitment Adjustment Letters from the USAC Schools and Libraries Division, adjusting commitments of approximately \$144,000, and demanding recovery of more than \$107,000 in previously disbursed funds (an additional \$100,000 has been

disallowed by funding commitment decision and/or not included on application). In each case, the funding commitment adjustment explanation is as follows:

“A Beneficiary Audit found that the entity (Rhode Island Avenue Facility) receiving this services is an ineligible adult education facility Based on information provided by the District of Columbia it has been determined that adult education facilities in the District of Columbia are not eligible for support under the SLD Support Mechanism ”

USAC Commitment Adjustments,
January 31, 2003

However, as is clear, the Audit Report failed to take account of the distinction between school facilities that provide basic education for learning and developmentally disabled persons at the elementary and secondary education level, such as Kennedy's facility at Rhode Island Avenue, and school facilities that provide adult education programs and post secondary courses for persons who are not learning or developmentally disabled.

The Audit Report also failed to take account of the statutory and programmatic definition of the terms “elementary school” and “secondary school” that are the applicable criteria for E-rate funding.

These would both appear contrary to Government Auditing Standards (the “Yellow Book”), which requires that sufficient, competent and relevant evidence be obtained to afford a reasonable basis for auditors' findings and conclusions (section 6.46), that when comments of officials of the audited program oppose a draft finding the auditors must modify the report when the comments are valid (section 7.42), and that the audit report must be complete, accurate, fair and not misleading (section 7.50 through 7.58).

The Kennedy Institute is a nationally recognized nonprofit organization that has been providing special education services to learning and developmentally disabled individuals in the District of Columbia and Maryland for nearly 40 years. However, its critical services are now impeded and jeopardized by an incomplete and incorrect Audit Report, and consequent commitment adjustments and demands for recovery of funds.

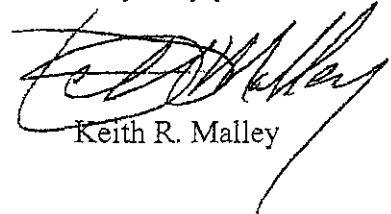
The Telecommunication Act of 1996 set forth an express mandate for the FCC to promote universal access to telecommunication services, including expressly as specific beneficiaries elementary and secondary schools and libraries. It would indeed be against the underlying policy of the Act if those persons who are least likely to have access, students who are learning and developmentally disabled, and the programs that serve these students, were to be prevented access by an incomplete and incorrect audit report.

Therefore, I am requesting that you immediately issue a revision or supplement to the Audit Report, to delete the incorrect paragraph, and to add that the Kennedy Institute Rhode Island Avenue school facility is for learning and developmentally disabled persons at or below the secondary school level, and fully eligible for Schools and Libraries Program E-rate funding.

Please send this revision or supplement to my attention within the next thirty days, as time is critical and of the essence.

Thank you for your assistance

Very truly yours,

A handwritten signature in black ink, appearing to read "Keith R. Malley", written over the printed name.

Keith R. Malley

Attachment (1)

cc: Michael Ward
President and CEO
The Lt. Joseph P. Kennedy Institute







LT. JOSEPH P. Kennedy Institute

Working Together to Create Opportunities for
People with Developmental Disabilities

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Programs and Services - Adult Services

Adult Education Program

680 Rhode Island Avenue, NE, 2nd Floor
Washington, DC 20002
Tel (202) 529-0500
Fax (202) 529-8211

Contact Michelle Johnson, Program Director
(202) 529-0500 ext 791

We provide adult education services to individuals with learning and other developmental disabilities during day and evening hours






Our Adult Basic Education/GED Preparation Day Program (9:30 am to 2:30 pm, 3 days a week on Mondays, Tuesdays and Wednesdays) serves low income parents (TANF recipients) who have learning and other developmental disabilities

Our Adult Basic Education/GED Preparation Evening Program (5:00 to 7:00 pm, 2 days a week on Tuesdays and Wednesdays) serves men and women with learning and other developmental disabilities

Our services include

- Educational assessments and learning profiles
- Learning disabilities Screenings
- Literacy training, adult basic education and GED preparation classes
- Job readiness training and basic typing/computer instruction
- Counseling and referral to other social service agencies
- Referral to Kennedy Institute Employment Programs for job development and placement

more...

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-  [Family Support Services](#)
-  [Advocacy](#)
-  [Services by Location](#)

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LT. JOSEPH P. *Kennedy Institute*

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Programs and Services - Children and Youth Services

Kennedy Schools

Lower School
801 Buchanan Street, NE
Washington, DC 20017

Upper School
680 Rhode Island Avenue, NE
Second Floor
Washington, DC 20002

Contact Twilah Anthony (202) 529-7600

We educate students with developmental disabilities, ages 6 to 22 years old, in our un-graded academic program that also offers intensive therapeutic, vocational and transition services that foster independence

Kennedy Lower School is for children 6 to 13 years and Kennedy Upper School is for youth 13 to 22 years

At Kennedy Institute, students work toward personal goals they set with their families and teachers and prepare to make the transition back into neighborhood schools or graduate and move into employment and/or postsecondary education. Most students live in DC, with a few living in Montgomery and Prince George's counties in Maryland

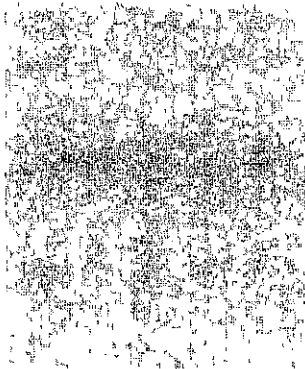
The School offers small class sizes, with a teacher and teacher's assistant in every classroom. We group students in classrooms according to their goals and support requirements. We provide job training for older students, who are matched with and supported during volunteer jobs, internships, and paid employment. The School hosts DC Summer Works, which offers another avenue for job placement. Upon graduation, we refer students to adult programs for continuing vocational, educational, or community living supports

Services include

- Individualized instruction tailored to each student's individual goals, cognitive ability,

more...

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- [Services by Location](#)



and learning style.

- Occupational, physical, speech and language, and social and emotional therapies
- After-school programs
- Job training, job shadowing, internships, and community-based career awareness experiences
- Transition services and counseling
- Family supports

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UNIVERSITY OF THE DISTRICT OF COLUMBIA
STATE EDUCATION AGENCY, SEA
JERRY JOHNSON, ASSISTANT STATE DIRECTOR
4200 CONNECTICUT AVENUE, NW
WASHINGTON, DC 20008

Phone: 202-274-7014

Fax: 202-274-7188

Email: JJohnson232@hotmail.com

July 30, 2003

Mr. Michael Ward
President and CEO
The Lt. Joseph P. Kennedy Institute
801 Buchanan Street, NE
Washington, DC 20017

Dear Mr. Ward:

This is to confirm advice that I provided to Ms. Michelle Johnson, Program Coordinator of the Adult Education Program.

The University of the District of Columbia, State Education Agency (SEA) is federally mandated by Title II of the Workforce Investment Act, Public Law 105-220 ("Adult Basic Education and Family Literacy Act") to provide adult education and literacy services in order to: (1) assist adults to become literate and obtain the knowledge and skills necessary for employment and self-sufficiency; (2) assist adults who are parents to obtain the educational skills necessary to become full partners in the educational development of their children; and (3) assist adults in the completion of a secondary school education.

The SEA for the District of Columbia has determined that facilities in the District that provide adult education services for individuals reading at elementary or secondary school/pre GED level qualify and are eligible for Schools and Libraries Division (SLD) E-rate funding especially since mandatory universal fees from telecommunication usage are earmarked for individuals who would not otherwise afford and/or have access to technology.

The Lt. Joseph P. Kennedy Institute has provided such adult education since 1998 at one or more of its facilities in the District, including its facility at Rhode Island Avenue, NE. These facilities continue to serve adults who have fallen through the safety net of the traditional education system in completing elementary and secondary education. Therefore, these facilities qualify and are eligible for SLD E-rate funding.

Sincerely,

Jerry Johnson
Assistant State Director
State Education Agency

DC Stands for Literacy

Website: www.dcadultliteracy.org

KEITH R. MALLEY
ATTORNEY AT LAW
VA, MD, DC, GA BAR

Copy by Fax. 973-599-6542

August 27, 2003

Letter of Appeal
Schools & Libraries Division
Box 125 - Correspondence Unit
80 South Jefferson Road
Whippany, NJ 07981

Re: Three Letters of Appeal dated February 25 and 26, 2003 re
Three Commitment Adjustment Letters dated January 31, 2003

Applicant Name: Lt. Joseph P. Kennedy Institute
Form 471 Application Nos 327671 (Funding Year 2002-03),
245988 (Funding Year 2001-02),
192091 (Funding Year 2000-01)

Dear Appeals Group,

I have been retained by the Lt. Joseph P. Kennedy Institute in connection with the above referenced pending appeals, and am submitting two attachments to supplement those appeals

First, please find enclosed a letter from the State Education Agency (SEA) for the District of Columbia, the University of the District of Columbia, dated July 30, 2003, which is dispositive on the issues raised by the appeals. The SEA letter makes the critical point as follows:

"The SEA for the District of Columbia has determined that facilities in the District that provide adult education services for individuals reading at elementary or secondary school/pre GED level qualify and are eligible for Schools and Libraries Division (SLD) E-rate funding especially since mandatory universal fees from telecommunication usage are earmarked for individuals who would not otherwise afford and/or have access to technology."

The SEA letter further expressly states that the Kennedy Institute has provided such adult education at District facilities since 1998, and that these Kennedy Institute facilities qualify and are eligible for SLD E-rate funding.

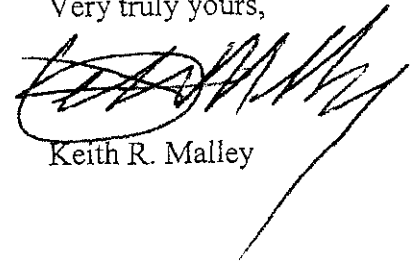
Second, I also enclose a copy of my letter to the USAC Audit Division dated June 10, 2003, requesting that they revise audit findings contrary to the SEA determination, and affirm that schools for learning and developmentally disabled adult persons below the secondary school level are fully eligible for E-rate funding (the auditor has indicated he can not act because of the pending appeals, and instead forwarded a copy of the letter to your group for consideration).

Based on the Kennedy Institute's three Letters of Appeal dated February 25 and 26, 2003, as supplemented by the two enclosures herewith, I respectfully request that you grant all three Kennedy Institute appeals, reinstate all funding commitment adjustments, and disburse all currently withheld funds.

Please contact me, at 703-351-5061, if there are any questions regarding these appeals

Thank you for your assistance.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Keith R. Malley', with a large, sweeping flourish extending from the bottom right.

Keith R. Malley

Encl (2)

cc: Michael Ward

KEITH R. MALLEY
ATTORNEY AT LAW
VA, MD, DC, GA BAR

Copy by fax: 202-776-0080

August 6, 2003

Mr Ed Falkowitz
Manager Audit Response
Universal Service Administrative Company
2120 L Street, NW, Suite 600
Washington, DC 20037

Re: Pending Appeals by the Lt Joseph P. Kennedy Institute Appeals of (i) three Commitment Adjustment letters dated January 31, 2003 re Form 471 Application Numbers 192091, 245988 and 327671, and (ii) one Funding Commitment Decision letter dated August 26, 2002 re Form 471 Application Number 327671

Letter from Keith R. Malley dated June 10, 2003 to USAC, supplementing the appeals, and requesting that USAC find that adult education facilities for learning and developmentally disabled persons in the District are eligible for E-rate funding

Dear Mr Falkowitz,

This letter is to further supplement the above referenced pending appeals by the Kennedy Institute, and my previous letter of June 10, 2003 in support of those appeals, which we discussed by telephone on June 19, 2003

Please find enclosed a letter from the State Education Agency (SEA) for the District of Columbia, the University of the District of Columbia, dated July 30, 2003. This SEA letter supersedes and corrects prior information that you indicated USAC received from the DC Public Schools, which is the District's local education agency (LEA), not the SEA. I believe that the SEA letter is completely dispositive on the issues raised by the appeals. The SEA letter makes the critical point as follows:

"The SEA for the District of Columbia has determined that facilities in the District that provide adult education services for individuals reading at elementary or secondary school/pre GED level qualify and are eligible for Schools and Libraries Division (SLD) E-rate funding especially since mandatory universal fees from telecommunication usage are earmarked for individuals who would not otherwise afford and/or have access to technology."

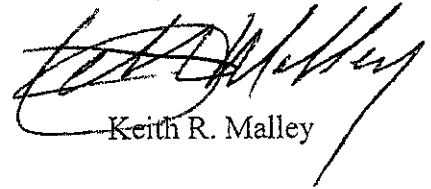
The SEA letter further expressly states that the Kennedy Institute has provided such adult education at District facilities since 1998, and that these facilities Kennedy Institute qualify and are eligible for SLD E-rate funding

Please provide the SEA letter and information to the USAC officials who are currently reviewing and will decide the four pending appeals of the Kennedy Institute.

Please call me, at 703-351-5061, in the event of any questions.

Thank you for your assistance.

Very truly yours,

A handwritten signature in black ink, appearing to read "Keith R. Malley", written over a horizontal line.

Keith R. Malley

Encl (1)

cc: Mr. Michael Ward



Universal Service Administrative Company
Schools & Libraries Division

Administrator's Decision on Appeal - Funding Year 2000-2001

January 20, 2004

Michael D. Ward, President and CEO
Lt. Joseph P. Kennedy Institute
801 Buchanan Street NE
Washington, DC 20017

Re: Billed Entity Number: 21683
 471 Application Number 192091
 Funding Request Number(s): 410090, 410311, 410670, 410738, 410783
 Commitment Adj. Letter Dated January 31, 2003
 Your Correspondence Dated: February 25, 2003

After thorough review and investigation of all relevant facts, the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (USAC) has made its decision in regard to your appeal of SLD's Funding Year 2000 Commitment Adjustment Letter for the Application Number indicated above. This letter explains the basis of SLD's decision. The date of this letter begins the 60-day time period for appealing this decision to the Federal Communications Commission (FCC). If your letter of appeal included more than one Application Number, please note that for each application for which an appeal is submitted, a separate letter is sent

Funding Request Number 410090, 410311, 410670, 410738, 410783
Decision on Appeal: **Denied in full**
Explanation:

- You have stated on appeal that the statements that were made within the Commitment Adjustment Letter dated January 31, 2003, are the result of a misunderstanding about the nature of the programs at the Rhode Island Avenue Facility. Specifically, you noted that the labeling of this facility as an adult education facility is a misnomer and does not accurately describe the facility and/or its programs and students. You stated that in accordance with the Individuals with Disabilities Education Act (IDEA), the Kennedy Institute educates students with developmental disabilities, ages 6-21 years, in your ungraded academic program that also offers intensive therapeutic, vocational and transition services that foster independence. You explained that the Rhode Island Avenue Facility provides Secondary Education and GED classes for individuals with disabilities. You noted that the funding requests listed on the issued Commitment Adjustment Letter are based solely on the Secondary Education and

GED courses provided at the Rhode Island Avenue facility. You further argued that the U.S. Department of Education defines Adult Basic Education as programs designed for adults and out of school youths ages 16 years or older who are currently functioning below the eighth grade level or equivalent; are not enrolled in secondary school; do not have a secondary school diploma; and are beyond the age of compulsory school attendance under state law. You close your appeal by stating that the facility offers secondary education for students at or under GED level in accordance with the SLD program eligibility requirements, and this meets the statutory definition of a Secondary School as defined in the Elementary and Secondary Education Act of 1965 in that the school does not include any education beyond grade 12.

- After thorough review of the appeal, it was determined that the funding requests listed above are site-specific to the Rhode Island Avenue Facility and were listed on your submitted Form 471 application. Upon review of the documentation pertaining to the USAC Internal Audit site-visit, the entity (Rhode Island Avenue Facility) for which funding was requested within the funding requests noted above was found to be providing adult education, which is ineligible for e-rate funding in Washington, DC, based on the rules of the Schools and Libraries Support Mechanism.
- On May 29, 2003, documentation was obtained from the school's website (www.kennedyinstitute.org/adulteducation.htm) that validated the Rhode Island Avenue Facility (680 Rhode Island Avenue, NE, 2nd Floor) as being specifically used for Adult Education Basic and GED Preparation Programs. The purpose of the site-visit audit was to ensure the school's compliance with FCC regulations and the rules of the Support Mechanism. The scope of the audit and the observations that were witnessed at the time of the site-visit were documented within the Audit Report. It was also determined that the applicant was provided the opportunity to respond to the report and provide information that would support the fact that the entity receiving the requested services was not an Adult Education facility as witnessed by the auditors during the site-visit. The response documentation that was submitted to USAC by the applicant does not prove that the Audit Report determination was incorrect. Also, the documentation provided on appeal by Michael D. Ward, President and CEO, Lt. Joseph P. Kennedy Institute (dated February 25, 2003) and the additional information provided by Keith R. Malley, Attorney at Law (dated June 10, 2003, and sent via Federal Express to Mr. Wayne Scott, Director, Internal Audit, USAC and Mr. Jim Rodda, Manager, Internal Audit, USAC) does not prove that the Audit Report determination was incorrect. It was determined that the SLD Commitment Adjustment Letter that was issued to the applicant and the related service provider informing them of the commitment adjustment that was performed on this funding request was properly justified (based on the facts that were uncovered during the USAC Internal Audit site-visit) and was issued in accordance with the rules of the Support Mechanism concerning ineligible entities.

- Your Form 471 application included costs for the following ineligible entity to receive services: **Rhode Island Avenue Facility**. FCC regulations provide that “[o]nly schools meeting the statutory definitions of “elementary school,” as defined in 20 U.S.C. 7801(18), or “secondary school,” as defined in 20 U.S.C. 7801(38) . . . shall be eligible for discounts.” 47 C.F.R. § 54.501(b); *see also* Federal-State Joint Board on Universal Service, CC Docket No. 96-45, *Report and Order*, 12 FCC Rcd 8776 at ¶¶ 554 - 555 (1997) (“*Universal Service Order*”). In the *Universal Service Order*, the Commission defined a “school” as including “individual schools, school districts, and consortia of schools and/or school districts.” *Universal Service Order* ¶ 425 n.1087. 20 U.S.C. 7801(18) defines an elementary school as “a nonprofit institutional day or residential school, including a public elementary charter school, that provides elementary education, as determined under State law ” 20 U.S.C. 7801(38) defines a secondary school as “a nonprofit institutional day or residential school that provides secondary education, including a public secondary charter school, as determined under State law, except that such term does not include any education beyond grade 12.”¹
- Whether an individual school, school district, or consortia of schools or school districts are eligible for discounts depends on whether the entity is a nonprofit institutional day or residential school that provides elementary or secondary education through grade 12 as determined under state law. The documentation (Funding Year 2000 Internal Audit Report) that was compiled during the USAC Audit indicated that this entity does not satisfy the definition(s) explained above. Consequently, the SLD denies your appeal.

If you believe there is a basis for further examination of your application, you may file an appeal with the Federal Communications Commission (FCC). You should refer to CC Docket No. 02-6 on the first page of your appeal to the FCC. Your appeal must be POSTMARKED within 60 days of the above date on this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. If you are submitting your appeal via United States Postal Service, send to: FCC, Office of the Secretary, 445 12th Street SW, Washington, DC 20554. Further information and options for filing an appeal directly with the FCC can be found in the "Appeals Procedure" posted in the Reference Area of the SLD web site or by contacting the Client Service Bureau. We strongly recommend that you use either the e-mail or fax filing options.

We thank you for your continued support, patience, and cooperation during the appeal process

¹ Program regulations define a “secondary school” as “a non-profit institutional day or residential school that provides secondary education, including a public secondary charter school, as determined under state law A secondary school does not offer education beyond grade 12 ” 47 C.F.R. § 54.500(k).

Schools and Libraries Division
Universal Service Administrative Company

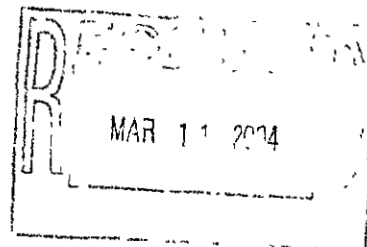
cc: Keith R. Malley, Attorney at Law
2111 Wilson Boulevard
Suite 600
Arlington, VA 22201

EXHIBIT SEVEN

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE
WASHINGTON, DC 20001

March 8, 2004

Mr. Michael D. Ward
President and CEO
Lt Joseph P. Kennedy Institute
801 Buchanan Street, NE
Washington, DC 20017



Dear Mr. Ward:

I hope you are well.

This letter is to certify that per our conversation, the State Education Agency-Adult Education at the University of the District of Columbia is the official state agency for adult education in the District.

This designation was made through legislation passed by the Council of the District of Columbia several years ago. In this capacity, the SEA-Adult Education at UDC is the official liaison with the U.S. Department of Education for adult education and receives federal and local funding for that purpose.

With ongoing appreciation for the wonderful work that you and the Kennedy Institute perform on behalf of citizens of our city,

Sincerely,

A handwritten signature in black ink, appearing to read 'Gregory McCarthy', is written over the typed name.

Gregory McCarthy
Deputy Chief of Staff for
Policy and Legislative Affairs